

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

John Doe , *
*
Plaintiff, *
v. * Case No. 1:21-cv-00944-JL
*
Town of Lisbon et al., *
*
Defendants. *

**DEPARTMENT OF JUSTICE’S RESPONSE TO MOTION TO VOLUNTARILY
DISMISS WITHOUT PREJUDICE**

The New Hampshire Department of Justice, by and through counsel, submits the following response to the plaintiff’s motion to voluntarily dismiss this action without prejudice:

1. The Department of Justice agrees with the consensus view that it makes no sense for two identical cases to proceed separately in this district.

2. Whether dismissal of one of the cases or consolidation (or something else) is the best way forward is ultimately a question left to this Court’s sound discretion. *See* Fed. R. Civ. P. 41(a)(2) (“[A]n action *may* be dismissed at the plaintiff’s request only by court order, on terms *the court considers proper.*” (emphases added)); *Seguro de Servicio de Salud de Puerto Rico v. McAuto Sys. Grp., Inc.*, 878 F.2d 5, 8 (1st Cir. 1989) (“[T]he trial court has broad discretion in weighing the costs and benefits of consolidation to decide whether that procedure is appropriate.”); *see also Delgado v. Pawtucket Police Dep’t*, 668 F.3d 42, 50 (1st Cir. 2012) (“District courts enjoy broad discretion in managing their dockets . . .”).

3. The Department of Justice takes no position on what course of action the Court should take, including whether it should grant the plaintiff’s motion for voluntary dismissal.

4. But however this matter proceeds, the Department of Justice reiterates its position that the Eleventh Amendment bars the claims against it, as set forth in the motion to dismiss (ECF Doc. No. 11) and reply to the plaintiff's objection to that motion (ECF Doc. No. 19).

Respectfully submitted,

NEW HAMPSHIRE DEPARTMENT OF JUSTICE

By its attorney,

JOHN M. FORMELLA
ATTORNEY GENERAL

Dated: February 23, 2022

/s/ Samuel Garland
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on all counsel of record through the Court's CM/ECF system

/s/ Samuel Garland
Samuel R.V. Garland